

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant/owner:** Carol Cambo  
95 Red Gate Lane  
Amherst, MA 01002

**Date application filed with the Town Clerk:** May 26, 2010

**Nature of request:** Request Special Permit to install a fence, greater than 4 feet in height in the front setback, under Section 6.29 of the Zoning Bylaw

**Address:** 95 Red Gate Lane (Map 11B, Parcel 102, R-N Zoning District)

**Legal notice:** Published on June 9, 2010 and June 16, 2010 in the Daily Hampshire Gazette and sent to abutters on June 9, 2010

**Board members:** Tom Simpson, Hilda Greenbaum, Mark Parent

**Submissions:**

- Project Application Report, dated June 18, 2010;
- ZBA application, filed with the Town Clerk on May 26, 2010;
- A copy of a “plot plan” prepared by Hadley Fence Company dated May 6, 2010;
- A brief “project narrative”;
- A copy of a Town GIS map, dated June 24, 2010, with the approximate fence location shown;
- Two photograph renderings of the approximate fence height and location;
- A fence “detail” document showing fence style, titled Custom Cedar Wood Fencing.

**Site Visit:** June 23, 2010

Tom Simpson, Hilda Greenbaum and Mark Parent met at the site. The Board members observed the following:

- The existing location of the house, situated on the east side of Red Gate Lane;
- The existing topography of the property which slopes down from Red Gate Lane towards the existing house and backyard area;
- The existing concrete pin demarcating a change in the direction of the property line and a large tree in close proximity to the pin;
- The existing concrete property pin demarcating the northwest corner of the property;
- Staff, in coordination with the applicant, ran a line between the two property pins to clearly identify that the fence would not be within the street right-of-way;
- The applicant coordinated with the fence company to identify the approximate location of fence posts, as well as displaying “mock” posts approximately six (6) feet in height.

**Public Hearing: June 24, 2010**

Ms. Cambo presented the application. She stated the following:

- The request is to install a fence that is taller than what is allowed in the Zoning Bylaw for reasons of safety and property protection;
- The existing house was built around 1950 and was constructed such that it is close to the road and below grade. The location of the house and the existing topography, which slopes down away from the road and into the property, makes the patio and deck highly visible from the road;
- The proposed fence is six feet in height and is located within the required front yard setback. The Zoning Bylaw limits fences in the front setback to four feet in height. The extra height is needed to provide privacy because the house and the deck/patio area are below grade from the road;
- The proposed fence runs from a corner of the house westerly toward the road. The location of the fence was chosen to provide security for her child and a dog and to help prevent them from entering the road. The traffic on the road has increased over the years, and particularly in the evenings;
- Valuables are not normally stored outside, but recently a chainsaw was stolen from the backyard. The fence may offer additional protection.

The Board members asked if there were any alternatives to the proposal, such as whether the fence could be:

1. Installed closer to the house and outside of the required front yard setback;
2. Only 4 feet in height within the setback; or
3. Be situated so that it is parallel to the road (rather than angled, as proposed).

The applicant stated the following:

- The house was built such that a portion of it is within the 20 foot setback. Installing a fence outside of the setback would eliminate the use of a significant portion of the property;
- A four (4) foot high fence in the proposed location would not provide privacy from passerby's due to the topography of the property which slopes down from the road and makes too much of the backyard visible;
- The proposed fence is arranged to provide maximum use of the property, and utilizing the least amount of fencing to adequately screen the backyard from the road;
- The proposed fence will be installed at a slight angle to the road and will follow the existing contours of the property to incorporate the existing shrubs and groundcover and to utilize an existing tree as a natural end point of the fence;
- An existing stone walkway adjacent to the house would have to be relocated to install a six foot fence at the required 20 foot setback.

The Board members confirmed the following:

- The age and siting of the house, as well as the topography and the location of the road all contribute to the difficulty in providing privacy to the backyard area;
- The house was either built in a non-conforming manner relative to the setback; the requirements had changed at some point (rendering it non-conforming); or there are inaccuracies in the GIS map;
- The property markers along this boundary are visible and can be used to determine that the fence will not be located within the Town right-of-way, regardless of whether or not the house is correctly positioned.

Mr. Simpson MOVED to close the evidentiary portion of the public hearing. Mr. Parent seconded the motion and the Board VOTED unanimously to close the public hearing.

**Public Meeting:**

**Specific Findings:**

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses and other uses in the district. The location of the fence relative to the road and topography will reduce the amount of fence that is visible by a passerby. The proposal is the least amount of fence needed to provide privacy and protection. Fences are allowed in all residential districts and the topography and the proximity of the house to the road are compelling reasons to allow a six (6) foot fence instead of a four (4) foot fence.

10.382, 10.383 and 10.385 – The proposal will not constitute a nuisance due to air pollution, lights or visually offensive structures; will not be a substantial inconvenience or hazard to abutters; and reasonably protects adjoining premises. The fence will not be visually offensive because of the limited amount of fencing being erected and that the fence will be less visible due to the topography. The fence will not be an inconvenience or hazard because the fence will not be located in the Town right-of-way and will not disrupt the clear site triangle.

10.384 - Adequate and appropriate facilities will be provided for the proper operation of the use. The fence is located entirely on the subject property and consists of the minimum amount of fence necessary to accomplish privacy and safety for the residents.

10.392 – The proposal provides adequate landscaping, including the screening of adjacent residential properties. The purpose of the fence is to provide screening from the adjacent properties. The location, height and style of the fence are compatible with the adjacent residential properties.

10.394 and 10.395 – The proposal avoids, to the extent feasible, impact on steep slopes; does not create disharmony with respect to the terrain and to the use, scale and architecture. The fence is arranged in a manner that does not disrupt the existing topography or terrain. The location, height and style of the fence are compatible with the adjacent residential properties.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw and the goals of the Master Plan. The proposal promotes the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.

**Public Meeting – Zoning Board Decision**

Mr. Simpson moved to APPROVE the application with conditions. Ms. Greenbaum seconded the motion. For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2010-00015, to install a fence, greater than four (4) feet in height in the front setback, under Section 6.29 of the Zoning Bylaw, as applied for by Carol Cambo, at 95 Red Gate Lane (Map 11B, Parcel 102, R-N District) with conditions.

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TOM SIMPSON

\_\_\_\_\_  
HILDA GREENBAUM

\_\_\_\_\_  
MARK PARENT

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2010 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.  
TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2010.  
NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2010  
to the attached list of addresses by \_\_\_\_\_, for the Board.  
NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2010,  
in the Hampshire County Registry of Deeds.

**Town of Amherst  
Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2010-00015, to install a fence, greater than four (4) feet in height in the front setback, under Section 6.29 of the Zoning Bylaw, as applied for by Carol Cambo, at 95 Red Gate Lane (Map 11B, Parcel 102, R-N District) with the following conditions:

1. The fence shall be constructed substantially in accordance with the location and arrangement shown on the site plan (Town GIS map) approved on June 24, 2010.
2. The fence shall not exceed six (6) feet in height.
3. The fence shall be constructed of materials that are consistent with the materials and style as shown on the composite fence detail sheet titled, Custom Cedar Wood Fencing.
4. If the fence materials do not age to a dark color, the fence shall be painted or stained a dark color.

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Tom Simpson, Chair  
Amherst Zoning Board of Appeals

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DATE